

STATE OF CALIFORNIA

SENATE SELECT COMMITTEE TO INVESTIGATE
PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

REVIEWING COMPLIANCE WITH SUBPOENAS FOR
DUKE, DYNEGY, RELIANT, AES, NRG, AND WILLIAMS

STATE CAPITOL
ROOM 3191
SACRAMENTO, CALIFORNIA

WEDNESDAY, JULY 18, 2001

10:55 A.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

1 P-R-O-C-E-E-D-I-N-G-S

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3 CHAIRMAN DUNN: Good morning, everyone. Welcome
4 to our again umpteenth-plus hearing.

5 The sole purpose of this morning's hearing is to
6 review compliance with the legislative subpoenas as to the
7 market participants that received service of the June subpoena,
8 with the exception of, we are not going to address Mirant, which
9 we did at the last hearing, and their review of compliance has
10 been continued to a date in either late August or early
11 September. I don't believe we've set that hearing yet.

12 For those who did not follow the last hearing, we
13 terminated the contempt process as to Mirant. They have, in
14 fact, come into compliance with the three demands we have made,
15 which, as a general reminder for everyone, are the establishment
16 of a Sacramento document depository, signature on the
17 confidentiality agreement, and then production at that
18 depository of the 16 priority requests or categories of requests
19 to be established in that depository.

20 In addition, as I've emphasized at a number of
21 hearings, once the 16 categories are responded to, we are asking
22 that the market participants stop the production. The purpose
23 for that is, we do not want to cause any unnecessary burden on
24 the market participants. If we can't garner the resources to
25 review those documents, there's no sense for any of the market
26 participants to have to continue to produce.

27 And what our intentions are as we move forward
28 and review those documents and are in need of additional ones,

1 that we will work with each of the market participants to
2 determine a second list of priority documents so that we can do

3 this in an orderly fashion, and not simply produce documents
4 that either, A, we're not going to get to, we the Committee and
5 staff, or simply are unnecessary given the focus of our
6 investigation, which I know evolves over time, as it would with
7 any investigation.

8 So, Mirant is in compliance with those three
9 demands.

10 Update everyone with respect to Enron. The
11 contempt process continues as to Enron. We expect that the
12 report will be finalized and submitted to the full Senate
13 probably tomorrow, again, if the Chair's estimates are worth
14 anything as far as time is concerned.

15 We are continuing discussions with Enron. We
16 have had extensive discussions with Enron, as a matter of fact,
17 since last week, continuing through this week, including today,
18 and we will continue those discussions. And at any time we
19 reach an agreement with Enron, we will terminate the contempt
20 process.

21 I've been asked what the next few steps are with
22 respect to that process, and it appears they will unfold as
23 follows. I think everyone is aware where we are with respect to
24 the Enron process.

25 Once the report is finalized, it will be
26 submitted to the full Senate. We expect that the President Pro
27 Tem will then refer that report to Rules Committee for further
28 handling. And as we determine what the next step is as far as

1 Rules Committee, we'll certainly advise everyone accordingly.
2 But that process continues, but so do discussions with Enron as
3 well.

4 With respect to the Enron litigation, it is
5 pending. No action has been taken in it. None was expected

6 when it's only a week old. I believe -- correct me if I'm
7 wrong, Mr. Drivon -- but I think we've been granted an open
8 extension in which to respond to that complaint.

9 MR. DRIVON: I believe that's correct.

10 CHAIRMAN DUNN: And again, Enron I think extended
11 that also in an effort to continue our discussions.

12 Despite what some believe, our desire is not to
13 find anybody in contempt, but rather to gain compliance, and
14 that is our number one priority still.

15 So, we were not dealing with Mirant or Enron
16 today. We are dealing with the remainder of the market
17 participants. So, why don't we commence the process.

18 The order that we're going to follow is, I've
19 asked Mr. Drivon, as Special Counsel to the Committee, to advise
20 us as to the status of each of the market participants that
21 received the June subpoena since the June 28th hearing. We're
22 not going to review everything that occurred before that, just
23 since June 28th, where we sit with each market participant.

24 For those who do not know him, this is Chuck
25 Stevens, who is sitting next to Mr. Drivon because we're not
26 making a secret of this. What we expect will occur today is,
27 continue the process as to Mr. Stevens' client, Reliant, and not
28 as to the other market participants. So, we invited

1 Mr. Stevens to settle in now, since we're probably going to get
2 to the Reliant issues relatively quickly.

3 We are, as usual, going to put Mr. Drivon under
4 oath, since he is testifying as to facts, but not Mr. Stevens,
5 because he's only appearing as counsel, advocating on behalf of
6 Reliant.

7 Mr. Pratt, if you would do your service.

8 [Thereupon LARRY DRIVON swore

9 to tell the truth, the whole
10 truth, and nothing but the
11 truth.]

12 CHAIRMAN DUNN: Mr. Drivon, except as to Reliant,
13 let's segregate out Reliant, can you update us since the June
14 28th hearing as to the issue of compliance concerning the other
15 market participants that were served with the June subpoena?

16 MR. DRIVON: Yes, Senator, I can.

17 Following our last hearing, I had a number of
18 contacts with each of the generators whose matters were
19 continued to this hearing. Those contacts have resulted in a
20 total of six, including Mirant, of the eight subpoenaed parties
21 coming into agreement with the Committee and moving towards
22 substantial -- or moving towards compliance in a substantial
23 way.

24 NRG, AES, Duke, Williams, and Dynegy, as well as
25 Mirant, have now each signed an identical confidentiality
26 agreement and depository access protocol, with the exception of
27 Mirant, which is slightly different. I spoke with Mirant's
28 attorney, Mr. Bittman, in Washington, D.C. this morning and have

1 indicated to him that we will be supplying him shortly with a
2 conformed redraft that he can, at his election, sign in lieu of
3 the one that they previously executed, to the extent that it
4 has any difference.

5 CHAIRMAN DUNN: If I may interrupt for a moment,
6 Mr. Drivon.

7 Can you just quickly inform the Committee as to
8 the change that was made in the confidentiality agreement with
9 the remaining market participants versus the one that was
10 originally signed with Mirant.

11 MR. DRIVON: There are some very minor technical

12 changes that I think make little if any difference.

13 The only change that I think is of any
14 significance is that the Committee has now agreed to include
15 language with respect to authorized persons and their
16 definition, and a clause requiring persons authorized to receive
17 access to these documents, which clause would require that such
18 authorized persons, other than Members of the Senate, sign that
19 they have read, understand and agree to the terms of the
20 confidentiality agreement and access protocol.

21 Members of the Senate will be required to sign a
22 document to the effect that they have read and understood the
23 terms of the confidentiality agreement and access protocol.
24 That represents a substantive change to the agreement.

25 CHAIRMAN DUNN: Any further updating necessary,
26 other than Reliant?

27 MR. DRIVON: Each of the market participants has
28 arranged for a document depository within a close proximity to

1 the Capitol. Each of them have deposited a varying number of
2 documents. I think the largest number of documents was
3 deposited by Duke. I understand that to be something in excess
4 of 120 Bekins' boxes of material.

5 The only entity that has not chosen to establish
6 a formal depository is NRG, and the reason is because they feel
7 that their responsive documents, aside from those that they
8 would produce in concert with Dynegy, would be of insufficient
9 number to warrant the establishment of such a facility, and they
10 have deposited those documents with us.

11 CHAIRMAN DUNN: And Mr. Drivon, for those that
12 may not be aware, can you just briefly describe the relationship
13 between NRG and Dynegy that results in that conclusion?

14 MR. DRIVON: One of them operates a plant, and

15 the other one sells the electricity.

16 CHAIRMAN DUNN: In other words, NRG, as least as
17 they maintain to this Committee concerning the documents we're
18 interested in, they don't have very many of those documents.

19 MR. DRIVON: That is the representation they have
20 made. It is consistent with at least the understanding that I
21 and others have at this time.

22 We will be confirming that as we go along and
23 certainly have not abandoned the Committee's right to further
24 proceed with respect to contempt if there is a dispute as to
25 that, and the confidentiality agreement reserves unto us that
26 right.

27 CHAIRMAN DUNN: Any other information we need to
28 know as to those market participants other than Reliant?

1 MR. DRIVON: No, other than you asked me for my
2 recommendation.

3 It is my recommendation that each of the market
4 participants that are subject of this hearing here today have
5 their contempt process terminated to the extent that such
6 process was in motion.

7 CHAIRMAN DUNN: Which I don't believe was as to
8 any of those market participants.

9 MR. DRIVON: I don't believe -- I think all we
10 did, Senator, was hear those issues and continue them until
11 today.

12 The reason I couch the language that way is
13 because there are some aspects of the procedure that are not
14 totally clear. I want to be careful that my language is not
15 restrictive.

16 CHAIRMAN DUNN: Understood.

17 So, your recommendation, if I can restate it,

18 Mr. Drivon, to the Committee is that we continue a review of the
19 compliance on the subpoena. I'll recommend that it go to the
20 same date that we ultimately establish with respect to the
21 Mirant date that we referred to at the last hearing, which will
22 be some time late August, early September.

23 MR. DRIVON: That is correct, Senator.

24 CHAIRMAN DUNN: Anything further we need to hear
25 in your opinion with respect to the market participants, other
26 than Mirant?

27 MR. DRIVON: No, other than --

28 CHAIRMAN DUNN: I meant other than Reliant.

1 MR. DRIVON: Other than I would like to extend my
2 appreciation for the hard work and cooperation that's been
3 exhibited by the market participants on this issue.

4 CHAIRMAN DUNN: Senator Johannessen.

5 SENATOR JOHANNESSEN: Thank you, Mr. Chairman.

6 Two things. Number one, I'm not particularly
7 interested in personally signing any agreement on the
8 confidentiality. I would rather rely on the Chair to do that,
9 and to disperse those documents which would not have, quote,
10 "trade secrets." I think there's enough secrets going around
11 this building to last for a lifetime, quite frankly.

12 The second part is, how many have already signed
13 the agreement without objection?

14 MR. DRIVON: Six of the eight market participants
15 that were the subject of these subpoenas have signed both the
16 confidentiality agreement and the access protocol.

17 SENATOR JOHANNESSEN: So, what is it that are
18 different between the two that haven't signed and those that
19 have signed?

20 MR. DRIVON: The difference is, Senator, that one

21 of the two is Enron, with whom we've previously dealt. They
22 refused to enter into the confidentiality agreement that we have
23 proposed and have a number of other objections that they have
24 raised.

25 The second market participant is Reliant, and
26 they are the subject of further discussion here this morning.
27 And to date, they have also refused to enter into the
28 confidentiality agreement unless we agree to reduce that

1 agreement to a court order which, for reasons I think the Chair
2 will discuss, we would recommend against.

3 SENATOR JOHANNESSEN: So, you see no particular
4 reason why this should be done, with the exception of forcing to
5 go to court to get the information that we need?

6 MR. DRIVON: The position that Reliant and Enron
7 have taken is different than the position that all of the others
8 have agreed to. And we see no advantage to the Committee to
9 further capitulate with respect to these issues and feel that
10 we're on solid ground.

11 SENATOR JOHANNESSEN: Thank you. That answered
12 my question. Thank you very much.

13 CHAIRMAN DUNN: I will ultimately, at the end of
14 this hearing, be making a motion that will embrace the
15 recommendation of Mr. Drivon.

16 Let's move to Reliant, if we can. Mr. Stevens,
17 in discussing this with my staff and Mr. Drivon prior to arrival
18 here, it's my recommendation that what I will do is review the
19 objections that Reliant has made that were submitted on June
20 28th. Make my recommendation, as I think you're aware, we did
21 last week with respect to Enron, both the specific and general
22 objections, but it'll just be my recommendation, then give you
23 an opportunity, Mr. Stevens, to make any comments you wish,

24 whether re the objections or any other issue.

25 Are you okay with that procedure?

26 MR. STEVENS: Yes, your Honor.

27 I would submit for the most part for the court's
28 decision -- for the presiding officer's decision the written

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1 objections.

2 I would like to address what I think is a good
3 faith legal dispute, though, with the Committee over whether
4 evidentiary privileges apply. And if so, whether that entitles
5 a party like Reliant to the protections under California law of
6 a protective order.

7 And in addition, if the Chair is inclined to
8 entertain a contempt motion, I would like to talk to you about
9 that, because we believe that we have acted cooperatively. We
10 have a good faith legal dispute.

11 CHAIRMAN DUNN: Let me interrupt you, if I may,
12 Mr. Stevens, because the way we are looking at this is, we've
13 got two distinct issues to talk about. Those are your
14 objections, and then the issue of contempt. Kind of separate
15 and apart from each other.

16 So, why don't we do this. Why don't I give you,
17 or at least to the Committee, my recommendations on the
18 objections, let you respond to those, including the issue about
19 the evidentiary objections that you've raised, and let you make
20 comments at that point. Let's wrap up the objections side of
21 it, then deal with, if we need to, the contempt side at that
22 point. Fair enough?

23 MR. STEVENS: Yes.

24 CHAIRMAN DUNN: For everybody's benefit, what
25 Reliant had done, as with others -- so I'm not trying to
26 distinguish Reliant's actions in this regard -- is, when we had

27 our first compliance hearing, it was June 28th. On that date of
28 June 28th, Reliant did submit objections to the subpoenas very

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1 similar to what Enron had done, although not identical, and also
2 had produced, I believe -- correct me if I'm wrong, Mr. Drivon
3 -- one box of documents at that time.

4 MR. DRIVON: One-half box.

5 CHAIRMAN DUNN: Which the Committee has reviewed.
6 We're not going to disclose any confidential data, but fair to
7 reflect that at least in my review of it -- Mr. Drivon, correct
8 me if you have any different impression -- that some of the
9 information appeared responsive, some did not. Some seemed to
10 be irrelevant information that had been included.

11 Is that a fair characterization, Mr. Drivon?

12 MR. DRIVON: That is.

13 CHAIRMAN DUNN: So, that's what occurred on June
14 28th. In light of the fact that we received the objections and
15 received at least a box of documents, and had not had an
16 opportunity to review it before the hearing, we chose to
17 continue the compliance. So we have now done that.

18 What I want to do, like I did with Enron a week
19 ago, I want to go through the objections very quickly. Don't
20 worry, everybody. We won't be here for the next hour reviewing
21 objections. Many of them are virtually identical to the
22 objections that Enron had raised, and I will refer back. Some
23 are a little bit different.

24 And I also want to address objections that
25 weren't formally made in the pleading but were in your
26 correspondence, Mr. Stevens, as well. We'll touch upon some of
27 the issues you raise.

28 Let me make some preliminary comments. Again, a

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1 little bit repeating what occurred with respect to the Enron
2 rulings, but I want to make it as clear as I can for everybody's
3 sake the view, at least from the Chair, and I welcome comments
4 from the rest of the Committee Members, as far as our process
5 here and what we're up to.

6 I identified what our purpose of investigating
7 was last week. I've been very consistent upon this, and I
8 believe all the Committee Members have, that our intent is to
9 investigate the wholesale electricity market to determine the
10 market behavior and its potential contribution to this, quote,
11 "energy crisis," end quote, we find ourselves in here in
12 California for the purpose of determining whether any
13 legislative action is necessary.

14 Part of this investigation is, without
15 reservation, a learning process for us. You'll see when I get
16 into the some of the objections that seem to suggest that this
17 is examining past conduct and has nothing to do with future
18 legislation.

19 The only way we can determine in my view whether
20 future legislation is necessary is really to understand the past
21 conduct that occurred in the wholesale electricity market.

22 But as I mentioned last week, the legislative
23 subpoena and the legislative investigation is an entirely
24 different legal animal than court proceedings traditionally in a
25 litigation context and all the discovery rules that apply.

26 I am also of the view that the due process
27 concerns in a litigation context are different than what they
28 are in a legislative investigation. In other words, in

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1 litigation the question is either civil or criminal liability.
2 That's not a question that's before this Committee. That's for
3 other entities, for example, the Attorney General's Office, to

4 investigate and determine.

5 We are simply investigating for the purpose of
6 determining whether legislative action is necessary. So, the
7 same level of due process concerns, at least in the Chair's
8 opinion, do not apply as they do to court proceedings.

9 There have been some compromises we've made on
10 this; although, I suspect market participants may respectfully
11 disagree. But let me note them for a second.

12 When it comes to a legislative investigation, if
13 you review the law, at least as we have, we don't believe
14 there's even a right to object as far as evidentiary objections
15 to our subpoenas. Privilege objections, yes. That one is
16 pretty clear. The law is also pretty clear that it is the
17 Committee that rules on those privilege objections.

18 There have been some privilege objections that
19 have been asserted by the market participants. We'll rule on
20 those. But most of the objections are objections that are not
21 with respect to a claim of privilege. But we're still ruling on
22 those nonprivilege objections, if I can call them that.

23 In addition, this may sound extreme, but as far
24 as a legislative investigation is concerned, there's actually no
25 right to counsel. Yet, we have not objected ourselves at all to
26 the fact that the market participants have retained counsel, and
27 in fact, they are our primary contact with respect to all of
28 these issues. We have not raised that issue, that there really

1 is no right to counsel for this particular objection.

2 But most importantly, one of the requests that
3 has been made to us, and raised by several of the market
4 participants, and Mr. Kirby on behalf of Enron was very
5 gallantly raising this issue during our previous discussions, is
6 the desire to have some court action, particularly with respect

7 to confidentiality. That is an understandable request for legal
8 counsel who has grown up professionally in a courtroom, where
9 the court is the one that enforces all agreements and so forth.
10 And thus, the desire for a court order is understandable when
11 one has lived their professional live in that courtroom.

12 However, to seek court action, in other words, a
13 protective order, a judicial order, over our confidentiality
14 agreement we feel is an interference between the operations of
15 the legislative branch of government and the judicial branch of
16 government. There have been objections re confidentiality that
17 have been asserted, and as I stated last week with respect to
18 Enron, the Chair has recommended, and at least as to Enron the
19 Committee has approved those objections, and we are addressing
20 those confidentiality concerns with a confidentiality
21 agreement.

22 But to seek court order status over our agreement
23 is an unwarranted interference by the judicial branch into the
24 legislative branch's activities. And thus, at least from the
25 Chair's perspective, we feel it is not a step that the Chair is
26 willing to take, and certainly recommends to the Committee that
27 we not take that particular step.

28 Let me address real quickly -- we have to

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1 interrupt. We have a quorum, Mr. Stevens, and when we have it,
2 we've got to seize upon it. Irma, if I can ask you to call roll,
3 please.

4 SECRETARY MORALES: Chairman Dunn.

5 CHAIRMAN DUNN: Here.

6 SECRETARY MORALES: Chairman Dunn here.

7 Senator Bowen.

8 SENATOR BOWEN: Here.

9 SECRETARY MORALES: Senator Bowen here.

10 Senator Chesbro.

11 SENATOR CHESBRO: Here.

12 SECRETARY MORALES: Senator Chesbro here.

13 Senator Escutia. Senator Johannessen.

14 SENATOR JOHANNESSEN: Maybe.

15 [Laughter.]

16 CHAIRMAN DUNN: It's a rough day for Senator

17 Johannessen.

18 SECRETARY MORALES: Senator Johannessen here.

19 Senator Morrow.

20 SENATOR MORROW: Here.

21 SECRETARY MORALES: Senator Morrow here.

22 Senator Sher.

23 CHAIRMAN DUNN: Thank you, Irma.

24 Having a quorum established.

25 What I'd like to do, Mr. Stevens, real quickly,
26 is just to touch upon some of the issues raised in your July
27 17th letter. Although I have touched upon one, obviously you
28 heard me in my comment about the desire not only by your client,
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1 by other market participants for the court order status over the
2 confidentiality agreement.

3 Some of the other issues I want to address very
4 quickly in that letter. And we will make this letter available
5 if anybody wants a copy of this letter.

6 You mention -- I don't want to repeat myself
7 here, so let me just skip some of the things I underlined.
8 Without reading a part of his letter, I want to reassert that
9 it's not as though we're taking the position on legitimately
10 confidential documents that the market participants are not
11 entitled to confidentiality. We have always ruled that there is
12 a level of confidentiality that warrants protection, and we've

13 been willing to do that.

14 We feel the confidentiality order that the
15 Committee has offered to the market participants protects it,
16 the confidentiality, and we hope that the fact that a number of
17 them have agreed to sign on now is evidence of that fact. I
18 suspect someone may dispute that statement, but at least that is
19 our view of it.

20 One of the suggestions that was made last week by
21 Enron's counsel and now by Mr. Stevens on behalf of Reliant is,
22 and I'll just read one sentence that's in your letter:

23 "We therefore offer to mediate
24 our objections to the subpoenas
25 under the direction of a
26 respected neutral mediator. "

27 Again, I understand where that offer has come
28 from. I get it as far as the mind set of a trial lawyer who¹

1 views the world from the courtroom perspective.

2 But again, we think the rules are clear that it
3 is the Committee that rules upon the privilege objections, and
4 we are also including, of course, the nonprivilege objections
5 that have been made.

6 One of your paragraphs, I want to read it, it's
7 only two sentences long. It says:

8 "If the Committee prefers to
9 seek formal adjudication of the
10 legal disputes, I note that
11 Government Code Section 9408,
12 which governs the Senate's
13 investigation, explicitly
14 grants the Committee the
15 authority to petition the

16 Superior Court for an order
17 compelling compliance with the
18 subpoena. While Reliant
19 prefers an informal resolution,
20 such a petition may provide an
21 efficient alternative for
22 resolution of our disputes. "

23 The position of the Chair, and I'll recommend to
24 the Committee is, Section 9408 only relates to an investigation
25 that is occurring when the Legislature has adjourned. It is not
26 applicable when the Legislature is in session. The court
27 provides the only viable vehicle for a continued investigation
28 at that time, and thus, that's why 9408 suggests it. But it is
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1 limited only to the time period where the Legislature has
2 adjourned.

3 For those of you who have not followed the
4 legislative processes very closely, the legislative session in
5 California is really two years long. We may take, God willing,
6 a break this fall, but it's not upon adjournment. The
7 Legislature is technically still in session. It won't adjourn
8 until sometime a year from this September. So, 9408 would only
9 apply, in the Chair's opinion, to the fall of the year 2002.
10 It's not applicable at this particular time.

11 The only other issue I want to address that you
12 raise, Mr. Stevens, it says:

13 "Until our legal disputes are
14 resolved, either informally or
15 formally, we respectfully
16 submit that the Committee
17 should not find Reliant to be
18 in contempt for asserting its

19 legal objections to the
20 subpoenas. "

21 I want to clarify. It's not the recommendation
22 of this Chair that any contempt have anything to do with Reliant
23 asserting its legal obligations. Just like when Enron filed a
24 lawsuit last week, I was very specific at the start of that,
25 that lawsuit had absolutely nothing to do with what we did last
26 week concerning Enron.

27 I respect that Reliant needs to make decisions,
28 as with Enron, to do whatever it believes is necessary, whether
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1 we agree or disagree. And certainly this Committee did not act
2 to punish Enron for filing a lawsuit or otherwise asserting what
3 it believed it felt it needed to assert, whether we agreed or
4 not, nor would the contempt have anything to do, if there is
5 such a thing with respect to Reliant, concerning that.

6 I just want to make that distinction,
7 Mr. Stevens.

8 So, very quickly let me run through the
9 objections.

10 What I recommend on this one, Mr. Stevens,
11 similar to Enron, you have general objections. I think there
12 are about 16 of them or so. And again, most of these are
13 similar to Enron's. I'm not going to spend all the time I did
14 last week. I'll just refer back to those rulings or
15 recommendations that were subsequently adopted.

16 But then you do, unlike Enron, who just referred
17 back to their general objections, you do have some specific ones
18 in each particular response to the categories of documents that
19 are different from the general objections.

20 I'm going to address like three or four of them,
21 but my recommendation to the Committee is, assuming we go

22 forward under whatever terms Reliant produces documents, as we
23 come across those at the time of production, is specific to each
24 document request, I recommend that we simply wait until that
25 time. We try in good faith to resolve those disputes
26 internally. If we have to bring them back to the Committee, we
27 will do that at that time, instead of going through every one of
28 the document requests specific objections that are here, other

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1 than a handful that I want to deal with.

2 General Objection Number 1, this was not asserted
3 by Enron to the best of my recollection. And I'll just read a
4 sentence of it:

5 "Reliant objects that the
6 subpoenas, taken as a whole,
7 are issued for the improper
8 purpose of developing evidence
9 pertinent to pending civil
10 litigation filed by private
11 plaintiffs or to pending civil
12 and criminal investigations by
13 other state agencies and not for
14 a legislative purpose. "

15 I'll be honest with you on this one, Mr. Stevens.
16 I'm going to set aside my own personal observations about that.
17 As you can probably imagine, I'm just outright offended by it,
18 to be perfectly honest with you, Mr. Stevens. But I'll assume
19 that you acted in good faith in asserting that objection.

20 This Committee has been, at least in the Chair's
21 opinion, very, very cautious and careful about how we've
22 conducted this investigation. We have been open with everyone
23 that we seek input from anybody that has knowledge, experience,
24 information, insights into the operation of the wholesale

25 electricity market, whether that's generators, traders, the AG,
26 private lawyers, the PUC, the ISO, FERC. Anybody we can get
27 information on that relates to the market behavior, good or bad,
28 we have sought.

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1 This investigation is in no way related to any
2 other investigation, such as the AG's or PUC's or FERC's, nor is
3 it in any way designed to assist, help, et cetera, any outside
4 private litigants.

5 This is being done for the exact purpose that the
6 Chair has asserted time and time and time again.

7 As I said, I want to put aside my own personal
8 views because we have successfully gotten criticism, I think,
9 from everybody who has any knowledge about the wholesale
10 electricity market. And since we probably offended everybody,
11 as the old adage goes, it probably means we're doing it the
12 right way.

13 But I know that this suspicion as referenced in
14 this objection is out there. If somebody believes it to be
15 true, I recommend that you come forward with that evidence of
16 that, either here at a hearing or privately, to either the Chair
17 or any Committee Member that an individual or company feels
18 comfortable with, to present such evidence.

19 But as to this particular objection, the Chair
20 will recommend to the Committee that it be overruled.

21 The second half of that paragraph says:

22 "The subpoenas are inherently
23 unsuited to legislative inquiry."

24 Talking about timeframe, and overburdensome, and the fact that
25 it has to do, as we'll hear a little bit later, with past
26 conduct.

27 Again, as most people are aware, to conduct an

28 investigation, to come to an understanding how the wholesale
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1 market works and what may have been dysfunctional about it that
2 may need state legislative action requires us to cast a very,
3 very broad net. We're trying our darnedest to narrow that as we
4 go on, thus the 16 priority requests, but we need to come to an
5 understanding before we can decide on any legislative action
6 that is necessary.

7 So, inasmuch as the second half of Paragraph One
8 may be an objection, the Chair recommends that it be overruled.

9 SENATOR BOWEN: Mr. Chair.

10 CHAIRMAN DUNN: Yes, Senator Bowen.

11 SENATOR BOWEN: With regard to the assertion that
12 some of these documents are relevant to whether existing law has
13 been violated, the Legislature has oversight authority over
14 whether existing laws are, in fact, being complied with. So,
15 that is a proper legislative purpose.

16 And it is in the purview of the Legislature, in
17 fact, to have oversight over other state agencies and bodies,
18 and to determine whether or not they are doing their job.

19 So, to some extent, you will have in a situation
20 where other agencies may be investigating, legislative action.

21 Although, I also believe that if there had been a
22 satisfactory resolution from the investigative activities of
23 other bodies, all of us in this Committee have better things to
24 do than what we're doing today. We're here because there was
25 not, has not been, a satisfactory resolution from actions,
26 investigations, being undertaken at the PUC or by the Attorney
27 General.

28 But we do have oversight authority. It is our
2

1 job to see whether or not the laws that the Legislature's passed

2 and enacted are being followed.

3 CHAIRMAN DUNN: I think the comment is very well
4 taken, Senator Bowen.

5 Paragraph Number Two of the General Objections:

6 "Reliant objects to the
7 requests on the ground they are
8 vague, ambiguous, overbroad,
9 unduly burdensome, oppressive,
10 duplicative, and seek production
11 of documents that are not
12 relevant to legislative action
13 within the scope of the
14 Committee's authority. "

15 We tried very hard, Mr. Stevens, to make sure
16 those requests were clear, and done in a way that the market
17 participants could understand, and even in an effort to speak
18 their language, if I can say that. So, we actually think
19 they're pretty clear.

20 We know that some of the requests are burdensome,
21 and we are willing to continue to work with each market
22 participant to minimize the burden, and also where a good case
23 can be made by a market participant on a given request that it
24 is overbroad due to timeframe, or whatever the case may be,
25 we're happy to listen to those and work on those on a
26 request-by-request basis.

27 Paragraph Number 3:

28 "Reliant objects to the

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1 requests on the ground that
2 they are burdensome and
3 irrelevant because not
4 appropriately limited to the

5 time period and on the further
6 ground ... that they fail to
7 define the period for which
8 responsive documents are
9 requested. "

10 Again, we think we did that, Mr. Stevens, but we
11 will, of course, work with your client, Reliant, on a
12 request-by-request basis.

13 Paragraph Number Four:

14 "Reliant objects to the
15 definition of "You" and "Your"
16 because inclusion of each of
17 Reliant's parent, subsidiary and
18 affiliated companies would
19 necessarily call for the
20 production of information beyond
21 the scope of the Committee's
22 subpoena power. "

23 Again, here it's well taken. We will work with
24 you on that one. If you can establish to the satisfaction of
25 the Committee that, in fact, some of the parent companies sit
26 outside of our jurisdiction completely, Mr. Stevens, or are
27 irrelevant to our inquiry, we're happy to listen to that on a
28 request-by-request basis.

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1 Paragraph Number Five:

2 "Reliant objects to the requests
3 to the extent they seek the
4 disclosure of information or
5 documents subject to the attorney-
6 client privilege, the attorney
7 work product ... and the

8 California trade secret
9 privilege ... or any other ...
10 privilege "

11 This is one that we agree that such documents are
12 entitled to confidentiality. And so, this one, where that sort
13 of privilege can clearly be established, we will continue to
14 work with each of the market participants to protect those
15 documents.

16 MR. DRIVON: Excuse me, Senator Dunn.

17 CHAIRMAN DUNN: Yes, Mr. Drivon.

18 MR. DRIVON: I believe that that particular
19 objection contains a mixed value. I think it speaks of
20 attorney-client privilege and attorney work product privilege,
21 which I believe are appropriately privileges.

22 And it also speaks of Evidence Code Section 1060,
23 objection pursuant to trade secrets, and I think that those two
24 categories should be handled differently.

25 CHAIRMAN DUNN: Your recommendation, Mr. Drivon?

26 MR. DRIVON: My recommendation is that we
27 recognize the attorney work product and attorney-client
28 privileges as such, which would, in an appropriate case, and₂

1 pursuant to the production to us of a privilege log setting
2 forth those individual documents, preclude us from viewing those
3 documents. And therefore, to the extent that that objection is
4 made on the basis of those privileges, my recommendation would
5 be that it be sustained under California law.

6 With respect to the Evidence Code Section 1060
7 objection with respect to trade secrets, I believe that it is
8 this Committee's prior position that, upon appropriate
9 designation under 1060, the documents will be treated as
10 confidential, available to the Committee pursuant to the

11 confidentiality agreement and access protocol.

12 CHAIRMAN DUNN: Thank you for the clarification,
13 Mr. Drivon.

14 Okay, let me go to Paragraph Number Six of the
15 General Objections. "Reliant objects to the requests as
16 duplicative and unduly burdensome" I won't read the rest
17 of this. Basically it's the same as Enron's objection as far
18 as, hey, a lot of these documents have been produced at Cal ISO
19 and PX, as well as other entities that may be embraced within
20 previous subpoenas by this Committee, actually technically by
21 the Rules Committee, on Cal ISO and PX. And we're not seeking
22 duplicative production here, and as with Enron, Mr. Stevens, we
23 will work with Reliant. And where they, in good faith, believe
24 those documents have been produced to, say, Cal ISO, for
25 example, and then subsequently produced to us, we're not seeking
26 that Reliant duplicate that production, as long as there is know
27 missing categories. And I think you understand what I'm talking
28 about there.

2

1 And as you conclude in that very paragraph:
2 "Rather than unnecessarily
3 imposing the burden on Reliant to
4 collect and produce the
5 information, the Committee
6 should obtain the full set of
7 bid and transaction data from
8 the ISO and PX, subject to
9 appropriate protection of the
10 confidential nature of the data."

11 Which we have done and will continue to work with Reliant, all
12 the market participants, Mr. Stevens, on that one.

13 Paragraph Seven,

14 "Reliant objects to the date,
15 time and place for the production
16 of documents specified in the
17 request because of the volume of
18 information requested is so
19 enormous "

20 et cetera.

21 Basically, I think this objection is saying the
22 service of subpoena was June 11. We sought production of all
23 the documents on June 28th. To the extent that this has been
24 interpreted as everything should have been produced on June
25 28th, I think everyone is now aware what we are seeking is the
26 priority 16 requests, because the burdensome objection is a fair
27 one, and we are trying to work with all market participants to
28 minimize the burden, not only on them, but also on this

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1 Committee as well, too.

2 You also mention in that paragraph:

3 "In addition, responsive
4 information includes some 150
5 tapes of recorded conversations
6 for the year 2000 alone. It is
7 estimated that 39 man-years would
8 be required to listen to those
9 tapes to extract responsive
10 information. "

11 This is also raised in your individual objections
12 in the various responses, Mr. Stevens. And again, it's one that
13 we want to discuss with you, work out.

14 I think term limits preclude anybody being here
15 for 39 man-years, but certainly we want to try to narrow it.
16 Your point is well taken.

17 Mr. Drivon.

18 MR. DRIVON: On that point, Senator, with respect
19 to the number of people years that might be required to do this,
20 we have agreed with other generators that they can produce to us
21 a log showing the day, date, and time of those conversations and
22 tapes so that they might be indexed, and we could make specific
23 requests from that log.

24 And so, that issue has been addressed.

25 CHAIRMAN DUNN: Thank you, Mr. Drivon.

26 Paragraph Eight:

27 "Reliant objects to the inclusion
28 of 'electronic records' in the

2

1 definition of 'document' because
2 with this definition responding to
3 the subpoenas would require an
4 unreasonably burdensome search of
5 all hard drives of every computer
6 in each of the companies."

7 Again, I'll just refer back to my burdensome
8 comments in the sense that we will work with all market
9 participants to avoid as much as possible the burden, both upon
10 the market participants and this Committee.

11 However, I want to note that, at least from the
12 Chair's perspective, I believe that if we desire it, we have
13 access to those hard drives. I'm not suggesting that they've
14 got to be produced tomorrow, but at least from the Chair's
15 perspective, I don't carve that out from the breadth of the
16 subpoenas that have been served. So, I just want to make sure
17 that that is clear.

18 But again, this is basically a burdensome
19 objection. We'll work with every market participant to minimize

20 the burden associated with it and not have to do any unnecessary
21 work associated with our subpoenas.

22 Paragraph Number Nine:

23 "Reliant objects to the portion
24 of instruction 1 regarding
25 electronic production of
26 numerical data because such
27 information may be stored
28 throughout each of the Reliant

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1 companies on both networked
2 computer servers and desktop PCs,
3 and the duplication of such
4 information in the requested
5 format is not practical. In
6 addition, Reliant expects to
7 number each of the documents and
8 label documents containing
9 confidential information or
10 trade secrets appropriately,
11 which cannot always be done when
12 electronic copies are produced. "

13 Again, I think this is basically another version
14 of a burdensome request. We will continue to work with every
15 market participant.

16 But I do not exclude, from the Chair's
17 perspective at least, this sort of information. If those
18 desktop PCs, for example, have data relating to specific
19 requests, that we actually get to and seek production of.

20 Paragraph Number Ten:

21 "Reliant objects to the requests
22 to the extent that they seek

23 Reliant's highly confidential and
24 proprietary business information,
25 including information that
26 constitutes trade secrets as
27 defined in ... and is exempted
28 from disclosure under "

3

1 I'm avoiding the cites here, everyone.

2 "Reliant offers to produce
3 confidential material under an
4 appropriate, enforceable
5 protective order. "

6 I emphasize the word "order".

7 Again, we have from the beginning recognized the
8 properness of asserting confidentiality where there is a
9 legitimate legal basis, and we are willing to protect it. I've
10 already made the comments regarding a protective order versus
11 the confidentiality agreement that we have entered into with a
12 number of the market participants.

13 Paragraph Eleven:

14 "Reliant reserves the right to
15 redact from documents it produces
16 any portion containing
17 information that is irrelevant,
18 nonresponsive or privileged. "

19 We've already addressed the privilege issue.

20 Irrelevant and nonresponsive, Mr. Stevens, absolutely. If there
21 is information contained in documents that you think is
22 irrelevant and you really want to find a need to redact it, and
23 it's not embraced within our subpoenas, I think you're entitled
24 to do that. You can probably imagine what you redacted, then
25 we'll subpoena that as well, too. But I certainly respect it if

26 it's irrelevant or nonresponsive to our actual subpoena, since
27 our only authority is embraced within the subpoenas themselves.

28 Paragraph Number Twelve:

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1 "Reliant objects to the
2 Committee's investigation of
3 Reliant's operations and pricing
4 of power because all such
5 operation and transactions fall
6 within the scope of the
7 exclusive jurisdiction of the
8 Federal Energy Regulatory
9 Commission. "

10 We've addressed this objection during the Enron
11 hearing. The Chair recommends that it be overruled because,
12 yes, FERC does oversee the pricing on the wholesale electricity
13 market, but there are many aspects of state law that still are
14 involved with the wholesale electricity market. And it is the
15 Committee's recommendation that this objection -- excuse me --
16 it is the Chair's recommendation that this Committee overrule
17 that objection.

18 Paragraph Thirteen:

19 "Reliant objects to each
20 paragraph to the extent the
21 information called for concerns
22 generation facilities which do
23 not and cannot sell electricity
24 to California. "

25 This objection may be well taken, Mr. Stevens. I
26 think we're have to deal with it on a case-by-case basis, and
27 here's the reason why. There may be a generation facility
28 outside of California that is owned by Reliant that somehow,

1 under the circumstances, may be relevant, but we're certainly
2 willing to work with you on a case-by-case basis with respect to
3 that objection.

4 Paragraph Number Fourteen -- don't worry,
5 everybody, we're almost at the end:

6 "Reliant objects to the
7 subpoenas on the ground that
8 service on an agent for service
9 of process in California is
10 insufficient to compel the
11 production of documents that are
12 located outside of California.
13 In addition, Reliant objects to
14 the subpoenas to the extent they
15 purport to compel the attendance
16 and testimony of a custodian of
17 records who is not a resident of
18 California."

19 As to the first half of Paragraph Fourteen, we
20 discussed this in the Enron hearing a week ago. We do believe
21 that California law allows this Committee, excuse me,
22 technically the Rules Committee, to issue subpoena for documents
23 on an entity we have jurisdiction over in California but that
24 their documents may exist outside of the State of California.

25 The same applies to the second half of that
26 objection.

27 Paragraph Fifteen is not really an objection, so
28 I'll skip it. They're just reserving certain rights to

3

1 themselves.

2 Paragraph Sixteen, Mr. Stevens, I'm going to read
Page 30

6 recommendation correctly, the Chair is taking no -- or
7 requesting and suggesting that the Committee take no position
8 with respect to Reliant's attempt to retain --

9 CHAIRMAN DUNN: I'm sorry, Mr. Drivon. Could you
10 start that again. My apologies.

11 MR. DRIVON: Sure.

12 The Chair is recommending -- is not making a
13 recommendation that the Committee endorse or validate the
14 attempt by Reliant to retain these allegations on their part
15 with respect to objections, et cetera, that are contained in
16 Sixteen or Seventeen, but simply noting that they've put them
17 down here.

18 CHAIRMAN DUNN: That's correct, Mr. Drivon.
19 Because they don't appear to be objections that need any comment
20 or ruling upon at all, my recommendation is, we simply take no
21 action of any type with respect to Paragraphs Sixteen and
22 Seventeen.

23 Okay, if you've got your document requests in
24 front of you, Mr. Stevens, actually I can read it as well, too.
25 I'm at Page Eight.

26 For those who do not have it here, the following
27 question was posed in Request Number Six. It says:

28 "All Documents reflecting prices

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1 and quantity of energy
2 transactions by You that relate
3 to California in any market
4 other than those described above,
5 including transactions relating to
6 Reliability Must-Run power
7 generation. "

8 The reason I'm raising this one is, in this,

9 Reliant asserts a specific objection, and I will read it. It
10 refers to the burdensome, and et cetera, that we've already
11 addressed. It says:

12 "To the extent the request is
13 specific and intelligible ..."

14 I love that one. Was there an editorial comment in there,
15 Mr. Stevens? Just kidding, don't worry. That was rhetorical.

16 "... Reliant objects that the
17 request does not seek information
18 pertinent any legislative purpose.
19 Reliant's only two RMR contracts
20 expired in December of 1999.
21 Historical Reliant documents
22 relating to RMR contracts or
23 generation are pertinent solely
24 to the past conduct of Reliant
25 and its compliance with
26 applicable law and tariffs, not
27 any future legislation the
28 Committee might recommend or

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1 other legislative purpose. The
2 burden of gathering and producing
3 such information outweighs the
4 marginal benefit, if any, that
5 may be gained by production of
6 the documents. "

7 This is the objection that really prompted my
8 earlier comments that the scope of our investigation, at least
9 in the Chair's view, necessarily must examine past conduct for
10 us to come to a complete understanding as far as what occurred,
11 and then, secondarily, to determine whether any legislative

12 action is necessary. So, I just wanted to make sure that was
13 complete.

14 I'm now turning to Page Sixteen.

15 SENATOR BOWEN: Mr. Chair.

16 CHAIRMAN DUNN: Yes, Senator Bowen.

17 SENATOR BOWEN: I really want to establish a note
18 of caution with regard to this issue of challenging what a
19 legislative purpose is.

20 It's my strongest advice to market participants
21 and those who are dealing with this Committee not to try to tell
22 us what a legislative purpose is.

23 We're the elected representatives of the people
24 of the State of California. Our authority in that regard is
25 broad. Our responsibility is broad.

26 And it may be that in other contexts, in court
27 proceedings, it's worth arguing about the purpose for which
28 information is sought.

3

1 But here, the consequences to California's
2 economy, the consequences to all the people we represent, all of
3 that which has happened, are so extraordinary that it's very
4 difficult for me to imagine any argument succeeding on the
5 matter of legislative purpose.

6 Unsolicited advice that you can take or not.

7 CHAIRMAN DUNN: Thank you, Senator Bowen.

8 MR. DRIVON: Senator, in support of that, I would
9 call to the Committee's attention that there is a virtually
10 unbroken chain of cases that speaks in various ways to that
11 issue, beginning with the case Rich against Maples, which was an
12 1867 case, and has been succeeded and supplemented through the
13 years by a myriad of cases. That case is found in 33 Cal. 102.
14 It is a California State Supreme Court case.

15 CHAIRMAN DUNN: Thank you, Mr. Drivon.

16 The last one that I want to deal with, and then
17 finally, Mr. Stevens, thank you for your patience as we've gone
18 through all of this, we'll turn it over to you for comments you
19 want to make.

20 On Page Twenty, it relates to Request Number 44,
21 which says, quite simply:

22 "All documents relating to market
23 power possessed by generating
24 units or plants or electricity
25 marketers in California."

26 In the middle of the paragraph response is the
27 following sentence:

28 "Reliant objects to this request

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1 on the ground that its use of the
2 term 'market power' is vague,
3 ambiguous and unintelligible."

4 The purpose of today's hearing, Mr. Stevens, is
5 not, obviously, to debate the definition of market power. I
6 think you are probably aware of the testimony of some of the
7 economists that have come before us who've indicated that it
8 appears the only entity that doesn't know what market power is,
9 is FERC, according to the testimony of some of the economists.

10 But my request to you, Mr. Stevens, is, after
11 today's hearing, to check with your client to determine whether
12 they really intend to stand on that particular sentence.
13 Because if we have to engage in the game of defining market
14 power, it will be an interesting endeavor, at least from the
15 Chair's perspective, I'm not so sure your client wants to engage
16 in at this point in time.

17 Senator Peace.

18 SENATOR PEACE: Mr. Chairman, I'd recommend you
19 add to that request that Reliant feel free, in fact, be
20 specifically requested to come back to us with their definition
21 of market power.

22 CHAIRMAN DUNN: Okay, if you would, please,
23 Mr. Stevens, bring that request to your client as well.

24 MR. STEVENS: I will.

25 CHAIRMAN DUNN: Thank you very much.

26 Mr. Stevens, it's now your turn. Thank you for
27 the patience as I've gone through all of the Chair's
28 recommendations. Your comments, please.

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1 MR. STEVENS: Again, I'll submit on the presiding
2 officer's rulings on the objections.

3 As you know, Senator, they're made to protect our
4 objections, to avoid waiving them. Many of them have been
5 resolved already.

6 We do have a central dispute with the Committee,
7 and that's the one I would like to address with you. That's the
8 one pertaining to the central legal question, whether
9 evidentiary privileges as embodied in the California Code of
10 Evidence, apply in this proceeding.

11 We had been told repeatedly by Special Counsel
12 Drivon and Senator's staff that it's the Committee's position
13 that those privileges don't apply, and that's the reason that we
14 can't have the protective order, that we think we're entitled
15 to, to protect our trade secrets and confidential information.

16 As the Senator knows, those are routinely entered
17 in litigation in California courts.

18 That's what our disagreement is. And we've gone
19 back and forth. We've had extensive discussions with Special
20 Counsel Drivon.

21 And we think if we can resolve that issue,
 22 essentially everything else falls into place with us. I don't
 23 want to say we wouldn't want to tweak the confidentiality
 24 agreement, but if we could come to terms and agree that
 25 privileges apply, and that the Senate has to honor privileges
 26 the way a U.S. Attorney does, or an attorney general does, I
 27 think our compliance falls into place.

28 It's a threshold matter. I think we need to 4

1 understand, with respect, the Committee's thinking on why
 2 evidentiary privileges, particularly the trade secret
 3 privileges, don't apply. I know in particular Mr. Drivon's
 4 clarification of the Committee's position on protecting them but
 5 not recognizing that they apply.

6 And I think that the participants who are
 7 subpoenaed parties really have the right to know whether the
 8 Committee takes the position that those privileges apply or they
 9 don't apply. And if we disagree, let's find a way to resolve
 10 that disagreement. We've cited our authorities. We don't know
 11 what the Committee's are.

12 But again, we think we can resolve our legal
 13 disputes if we can have a meaningful dialogue with you on the
 14 that issue.

15 CHAIRMAN DUNN: Let me pose a question to
 16 Mr. Stevens so that we can understand as well, too.

17 Ignoring, if we can, the issue of a market
 18 participant's right to assert those objections here, and let's
 19 just assume, hypothetically, you have that right, and that the
 20 Committee offers to protect what a market participant considers
 21 to be embraced within a privileged claim via the current version
 22 of the confidentiality agreement that several market
 23 participants have signed, what's the ongoing concern of Reliant

24 under those circumstances?

25 MR. STEVENS: Well, it's a question of
26 enforceability.

27 As you know from your practice, parties go to
28 court and enter a protective order because it's an enforceable
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1 order. People tend to honor court orders. They tend not to
2 leak information if they're subject to contempt of court.

3 And so, we submit that it is more likely that the
4 confidentiality agreement, once it's turned into a protective
5 order, will be strictly adhered to by all of those very many
6 people that will have access to the most sensitive documents of
7 the generators, and that's exactly why the California courts
8 routinely enter them.

9 And I might add one point. We don't see that
10 this would be the court interfering in the Senate's prerogative
11 or stepping on --

12 CHAIRMAN DUNN: Before you go there,
13 Mr. Stevens --

14 MR. STEVENS: -- because we'd be stipulating to
15 this with the Committee.

16 CHAIRMAN DUNN: We're going to get to that.
17 That's where I'm leading.

18 As I understand your comments, then, the real
19 issue here for at least Reliant, and I know this has been raised
20 by several of the other market participants, is not necessarily
21 the objection itself. It's rather converting the current form
22 of the confidentiality agreement into a protective order issued
23 by a court. That's really where the practical concern lies, if
24 we put aside some of the theoretical argument; fair?

25 MR. STEVENS: I think that's right.

26 CHAIRMAN DUNN: The concern that you know we have
Page 38

27 is that that step basically is an invitation to the court system
28 to involve itself in what is a purely legislative function that

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1 rests within an entirely different branch of government.

2 Now, I understand that historically there are
3 times where the judicial branch does that. We perhaps can go to
4 Florida last fall and cite that as an example.

5 But in those sort of cases, there was, at least
6 as I understand, and welcome your input, Mr. Stevens, there were
7 some fundamental constitutional rights that were alleged to have
8 been violated that the court felt it needed to delve into the
9 activities of another branch of government.

10 At least from the Chair's perspective, I don't
11 think that's what we're doing here. And it would be, again,
12 just in my perspective, a dangerous step for the legislative
13 branch to voluntarily invite the court to involve itself in our
14 processes, which we believe, at least, are for legitimate
15 legislative functions.

16 Your response.

17 MR. STEVENS: I hear you loudly and clearly,
18 Senator, but I took Constitutional Law also, and I think this is
19 the Constitution at play, not being undermined, because it's
20 checks and balances.

21 We have a dispute. This body enacts the laws.
22 If there is a dispute about what they mean, or how they're
23 applied, we walk hand-in-hand over to the Superior Court and we
24 ask for an adjudication. And if an outgrowth of that
25 adjudication is a protective order that resolves the dispute, so
26 much the better.

27 It's an efficient, amicable resolution.

28 And I really -- I know we disagree on this point,

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1 but I really don't think the Chair can take the position that
2 there's no legal support for the position that we're asserting,
3 that the rules of evidence apply, and that the privileges and
4 those rules apply.

5 We think that the terms of the Evidence Code on
6 their face support that position.

7 And we haven't gone running to a court asserting
8 that our rights are being violated. But we do think there is a
9 legal dispute there that is ripe for resolution.

10 And we think that's why the Senate would not be
11 yielding anything constitutionally to bring this issue to the
12 courts, because there is a live, good faith, nonfrivolous
13 dispute over whether evidentiary privileges apply, and if so,
14 what the remedy is for protecting them. Is it a protective
15 order, or is it something else?

16 So, we respectfully submit that going
17 hand-in-hand to a court and asking for resolution of a live
18 issue, and accepting that resolution, is not in any way
19 inconsistent with the operation of the Constitution.

20 It's just a classic example of a court stepping
21 in to resolve a dispute.

22 CHAIRMAN DUNN: Let me open it up first to any
23 questions or comments from Committee Members or Mr. Drivon, if
24 you have any comments you'd like to make as well.

25 Senator Peace.

26 SENATOR PEACE: I would just, given our
27 interesting and colorful experience at the hearing last week,
28 would like to compliment Reliant for being able to bring forward

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1 objections in a professional way. While we disagree on this
2 issue, for example, which is very significant, very serious to
3 this institution, we have an obligation to protect our

4 institution just as you have an obligation to protect your
5 client.

6 But I think the manner in which you've pursued
7 aggressively -- and Reliant certainly has a reputation for
8 pursuing its interests aggressively, but the manner in which you
9 aggressively choose that is to be contrasted dramatically by the
10 shoddy behavior of Enron.

11 MR. STEVENS: May have I have one point? I
12 wanted to say this up front.

13 In our view, this is not about respect for this
14 body or the Chair. I think this Chair knows that I have respect
15 for the Chair and this body, and also for Special Counsel
16 Drivon.

17 We have tried at every turn to show respect for
18 this Committee. We've been at every meeting. We've tried to
19 negotiate a resolution. We brought a senior officer from
20 Houston to meet with you, Senator.

21 When requested to produce our document retention
22 policies, we did so within four days. We didn't claim that they
23 were privileged.

24 CHAIRMAN DUNN: You did indeed. You
25 distinguished yourself in that regard.

26 MR. STEVENS: We respect what the Committee is
27 doing. We think there are some limitations under the
28 Connecticut Indemnity case in how far you can go investigating

1 specific individuals for whether they did something wrong.

2 But in the general, as a general matter, we
3 respect what the Committee is doing. And everything at least
4 I've done as counsel for Reliant has been consistent with that.

5 And I have worked very hard to convey in a
6 straight forward manner our difference of opinion on this

7 singular issue of great importance. And I've suggested
8 flexibility on objections. I've offered a compromise: Look at
9 these 10,000 documents which are confidential on an interim
10 basis, subject to your confidentiality agreement, not a
11 protective order, as we continue to look for a way to resolve
12 what I think is a very important legal dispute.

13 CHAIRMAN DUNN: I think I'm speaking for whole
14 Committee here, Mr. Stevens, that welcome any dissenting view.
15 I don't think anybody questions your statements about how you or
16 your client have dealt with this Committee.

17 We understand that there are currently legitimate
18 disputes that exist, and there will be many more to come in the
19 future. No one's blind to that fact at all.

20 And no, I don't suggest that legitimate disputes
21 constitute bad faith on behalf of any particular party.

22 Our options as a Committee, however are
23 relatively limited in the sense that -- I'll just speak for the
24 Chair again -- I believe that we have the power to rule on the
25 objections, that we have done so now, at least as to Reliant.
26 We did it last week as to Enron. And that if upon that ruling
27 there is not compliance, then our only option is to move forward
28 with the contempt process itself.

4

1 We don't really have any other option unless I,
2 as the Chair, am willing to recommend to the Committee that we
3 ought to go the recommended route of Reliant, which is either to
4 a neutral arbitrator, or to go to the court seeking court order
5 status on the confidentiality agreement itself.

6 It's not a recommendation the Chair is willing to
7 make to this Committee.

8 I understand that that then puts a market
9 participant such as Reliant in the position where Enron

10 currently is. And that is, if the issue is of sufficient
 11 importance to that particular market participant, they need to
 12 do whatever they believe is the appropriate next step, which is
 13 exactly what we recommended -- not recommended -- said to Enron
 14 when the issue first came up of the potential filing of
 15 litigation. Do whatever you believe is necessary, and we'll
 16 respond accordingly.

17 But obviously, the Chair feels strongly and
 18 recommends to the Committee that we are a very distinct branch
 19 of government, and this is one of those instances where another
 20 branch's involvement is not warranted.

21 I get it. Your client believes differently,
 22 Mr. Stevens.

23 Senator Peace.

24 SENATOR PEACE: I just want to underline. I
 25 mean, I hope you feel that this Committee and its
 26 representatives have responded accordingly and professionally in
 27 their dealings with you, even where we've had differences of
 28 opinion.

4

1 I've looked at the Reliant's filing. I've looked
 2 at the work product that's coming out of Reliant, and there is a
 3 distinct contrast. They have not made any effort to lace your
 4 work product with political commentary, or to engage in any sort
 5 of efforts to confuse the political with the legal. And you are
 6 to be complimented for that.

7 I wish, Mr. Chairman, that there was away to
 8 officially disaggregate, sort of a "contempt with respect"
 9 motion, if you will, to be distinguished from a "contempt with
 10 contempt" motion. Because certainly, Enron and its officials
 11 have pretty much shown themselves for what they are. And
 12 Reliant has demonstrated a great deal of class and integrity,

13 and they should be complimented for doing that.

14 We may have substantive differences of opinion
15 over what the definition of market power is, as well as some of
16 these legal issues. But this is the way you resolve issues like
17 this, either whether you're in the business world or whether
18 you're in the political world. Good business people try to deal
19 with people on a level of respect so that they'll want to do
20 business again.

21 The scorch and burn Enron philosophy, I suspect,
22 will prove in a few years hence to be one which will penalize
23 stockholders.

24 CHAIRMAN DUNN: Mr. Drivon, any comments you'd
25 like to add?

26 MR. DRIVON: Yes, there are, Senator Dunn.

27 First of all, I believe that we still continue to
28 mix the two issues here that have been forwarded by Mr. Stevens

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1 on behalf of his client Reliant. First of all, he continues to
2 assert that we are not recognizing evidentiary privileges.

3 What we have said, what I have said to him is
4 that it is certainly not clear that evidentiary objections are
5 pertinent in this setting.

6 CHAIRMAN DUNN: Let me stop you for a minute. I
7 want to make sure we're all clear.

8 Evidentiary objections, as distinguished from
9 privilege objections.

10 MR. DRIVON: That's right.

11 SENATOR BOWEN: Before you go on, we're talking a
12 language that I know some people here understand, but I rather
13 suspect that not everyone does. So, would you explain the
14 difference, Mr. Drivon, between evidentiary privilege --

15 MR. DRIVON: There are certain objections that

16 can be made to the production or introduction of evidence which
17 have traditionally been viewed as privileges. Those would
18 include such things as attorney-client, attorney work product,
19 priest-penitent, spousal immunity, privileges of that type.

20 CHAIRMAN DUNN: It will be interesting if we ever
21 get to those in this investigation.

22 MR. DRIVON: Well, Senator, we may.

23 On the other hand, there are certain objections
24 that are made which are of an evidentiary nature, such as
25 objections to the revealing of information that may be hearsay,
26 or other objections of that type, which are covered in the
27 Evidence Code.

28 And then there are some objections which are sort
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1 of a little of both. And there may be privileges against the
2 disclosure of certain evidence that may otherwise be admissible
3 that could include such things as trade secrets under the
4 Evidence Code, and so forth.

5 Without trying to get into an academic discussion
6 of the difference between the two, it is not the recommendation
7 of Special Counsel, nor do I believe it to be the position of
8 the Chair, that this Committee disregard those objections that
9 might be made on the basis of an evidentiary -- on an
10 evidentiary basis, or whatever trade secret is classified as, or
11 proprietary business information pursuant to the Evidence Code,
12 or the cases that define proprietary sensitive business
13 information.

14 Rather, it is our position that we maintain --
15 although we maintain that this body is not subject to those
16 evidentiary objections, nevertheless, we should choose to apply
17 them here as if they did apply simply because to do so is more
18 fair, and recognizes the legitimate interests of the market

19 participants that might come before this Committee.

20 In that regard, we have proposed, and six of the
21 eight persons or entities under subpoena have signed, a
22 confidentiality agreement which deals with the handling of those
23 documents. That is one of the two objections I understand
24 Mr. Stevens is making.

25 The other is the objection with respect to
26 enforceability. In that regard, not only is it clear to me, and
27 therefore that at least part of the basis for my expression to
28 the Chair and to the Committee, that the courts do not have
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1 jurisdiction in this part of the procedure. In particular I
2 cite Government Code Section 9407 and 9408. 9407 deals with how
3 these matters are to be dealt with when the Legislature is in
4 session. 9408 in situations in which the Legislature is not in
5 session.

6 By reading the two of them together, it is clear
7 that the Legislature has not abrogated nor substituted its
8 exclusive ability to deal with these issues during the times
9 that the Legislature is in session, but has specifically
10 reserved to the courts the court's jurisdiction with respect to
11 the matter when the Legislature is not in session. It is clear
12 under those two sections.

13 In addition to that, it is further clear that
14 unless there is a specific reservation with respect to rights
15 that would otherwise and responsibilities that would otherwise
16 be put forth by the Constitution and reserved to the Senate
17 thereby, that no limitation would be appropriate. That is to
18 say, if there's a limitation, it must be a specific limitation
19 on those general powers. And there are number of cases in that
20 regard.

21 Similarly with respect to due process issues, we

22 get some guidance from the cases that indicate that due process
 23 in this situation does not even require the Committee to allow
 24 attendance by counsel in a representative capacity. We have
 25 chosen, and it has been my suggestion and the Chair's suggestion
 26 that we allow that in any case. I merely cite it to draw
 27 attention to the fact that there are different due process
 28 considerations, as the Chair has previously -- to which the

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1 Chair has previously alluded.

2 I believe further that an attempt by this
 3 Committee to allow the court system to impose the enforceability
 4 of this agreement, would be to, at least by implication, suggest
 5 that the Senate's own ability to enforce this agreement as to
 6 its Members and as to its staff and others that it might
 7 consult, be abrogated to the court.

8 I believe that the Senate retains unto itself the
 9 responsibility and the power to enforce this agreement should it
 10 be violated by myself or others.

11 CHAIRMAN DUNN: In other words, it's your opinion
 12 that the Senate has the ability to punish someone who should
 13 violate the agreement.

14 MR. DRIVON: Should I, Senator, violate this
 15 agreement by the disclosure of confidential information, I would
 16 believe myself, and hereby declare that I believe myself, to be
 17 subject to the Senate's punishment. I believe that I could be
 18 held in contempt of the Senate because I would have violated an
 19 order that was issued and a proclamation issued by the Senate
 20 for that purpose.

21 And to then suggest that the Senate abandon its
 22 own procedure with respect to that, and abandon it to the courts
 23 for enforceability, while Mr. Stevens might feel that it is more
 24 enforceable if it's a court order, it seems to me that the

25 Senate might well feel it's more enforceable and better enforced
26 by the Senate's own internal mechanisms.

27 CHAIRMAN DUNN: Mr. Drivon, thank you.

28 Any final comments on the objections, Mr.

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1 Stevens? Then we'll get to the issue of compliance.

2 MR. STEVENS: On that issue, therein lies the
3 problem, what we just heard. Because if you boil it all down,
4 what Mr. Drivon just said was that the Senate will try to
5 protect those interests, trade secrets, et cetera, but the
6 Senate does not believe that those evidentiary privileges,
7 including the trade secrets privilege, apply and must be
8 honored.

9 And there is a distinction between trying to
10 accommodate, or trying to protect those interests and agreeing
11 on the record that they apply, and putting my client between the
12 proverbial rock and a hard place, because if those privileges
13 apply, and we do not assert them, and we do not stand on them,
14 and we just voluntarily produce the information, not subject to
15 a protective order, who is going to give us the protection that
16 we haven't waived that privilege for all purposes?

17 What if there's a subsequent civil action? As
18 you know, there are civil actions, and there's a discovery
19 request. How do know combat the argument that we have waived
20 our rights by voluntarily disclosing the documents?

21 These are unresolved issues at this point, and
22 we're constantly rethinking this. We do not believe we can
23 responsibly just turn over, pursuant to an unenforceable
24 confidentiality agreement, material which is unquestionably
25 protected by the California Evidence Code.

26 CHAIRMAN DUNN: Let me make a few comments, and
27 then let's wrap up on the objection side.

28 With respect to the points that you just raised,
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1 Mr. Stevens, as to whether someone in an outside piece of
2 litigation will argue that you've waived, for example, some
3 privilege because you produced it to this Committee, my own
4 personal view is, there's no connection between the two. Just
5 like I don't believe this Committee can, in any way, use the
6 filing of, for example, Enron's litigation as a reason for
7 furthering contempt against them. It is not relevant to the
8 contempt process itself.

9 Nor do I think anything that occurs in this
10 legislative process should be used in any outside litigation.

11 But obviously, I can't preclude an outside
12 litigant from using it, and I understand your client will have
13 to respond accordingly if that should happen.

14 But as to the issue of enforceability here, why I
15 tried to take us from the theoretical debate to the practical
16 place we are is that whether, in fact, we recognize the
17 objections or not, we have agreed to a confidentiality
18 agreement. Now, let's ignore enforceability for a moment,
19 Mr. Stevens. So that we are, whether we recognize the objection
20 or not, we are, via an agreement, a written agreement,
21 respecting those documents that you believe fall within that
22 privilege and are then protected by that agreement.

23 As to enforceability, I think that this Senate,
24 this legislative body, is in an equal position to enforce that
25 agreement as a court is as to a court order, in the sense that,
26 as we all know from, for those of us that have been involved in
27 litigation, a court order doesn't guarantee compliance. Many
28 court orders have been violated, particularly as to

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1 confidentiality. We can probably cite a long example of those.

2 And the court has found it necessary to take punitive measures
3 when there have been such violations.

4 The Senate, particularly, I would imagine, the
5 Senate Rules Committee and the full Senate has the ability to
6 take action against anyone found to have violated that agreement
7 that we are willing to sign with any market participant.

8 So at least from the Chair's perspective, moving
9 beyond the theoretical debate about whether you're entitled to
10 the objections, we have provided the protection via the written
11 agreement.

12 As to the objections, the Chair will stand on his
13 recommendations. I'll embrace it within a motion at the end of
14 the hearing today, which hopefully will not be too much longer,
15 as we did with Enron.

16 Mr. Drivon, let's go back to you, if we may, as
17 to the issue of Reliant's compliance. Can you give us the
18 status and your recommendations.

19 MR. DRIVON: Following the last hearing, I spoke
20 with Mr. Stevens. I believe -- I recall a conversation, I
21 believe, that took place on Sunday, Saturday or Sunday, on these
22 issues. I spoke with him on these issues, I believe, on Monday
23 and yesterday. He participated in a meeting yesterday afternoon
24 which lasted a couple of hours across the street where these
25 issues were discussed. Other generators were present at that
26 meeting, and that is the meeting where we hammered out the final
27 version of the agreement and access protocol.

28 I spoke again with Mr. Stevens after that

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1 meeting. We received a faxed letter from him yesterday evening
2 in our office related to these issues and to which the Chair has
3 alluded this morning.

4 I again spoke with Mr. Stevens this morning to

5 investigate the possibility of additional compromise or
6 accommodation being made.

7 In addition to that, we have in our office, I
8 believe, 1,792 pages of information previously supplied to us by
9 Reliant through Mr. Stevens. I understand that some form of
10 depository, I believe in Mr. Stevens' office, although I'm not
11 sure, has been established to accommodate further documents.
12 There has been offer by Mr. Stevens that we have access under an
13 interim agreement to 10,000 additional pages of documents, some
14 of which may be confidential at that depository.

15 Mr. Stevens has relayed to us the position of his
16 client, that his client is unwilling to produce documents, other
17 than the 10,000 on an interim basis pursuant to a
18 confidentiality agreement. Rather, insisting to this point that
19 such an agreement, while acceptable generally in form, is not
20 acceptable because it is not to be reduced to an order issued by
21 a court of competent jurisdiction -- I don't know what court
22 would have competent jurisdiction, relating back to my prior
23 comments -- and therefore, has refused to execute the offered
24 confidentiality agreement and access protocol to which the other
25 six entities under subpoena have previously acquiesced.

26 CHAIRMAN DUNN: Senator Bowen.

27 SENATOR BOWEN: Question of Mr. Stevens, if I
28 might.

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1 Do you believe there is any circumstance in which
2 we might reach agreement on the matter of confidentiality
3 without involving a court? Or do we have to litigate that
4 issue?

5 MR. STEVENS: Senator, I don't want to sound like
6 a lawyer, but it depends on what you mean by involving the
7 court.

8 We started this process --

9 SENATOR BOWEN: Let me clarify that.

10 Is there a way to solve this problem without a
11 protective order?

12 MR. STEVENS: I don't want to say it's out the of
13 the question, but the confidentiality agreement we have before
14 us now is not the functional equivalent of a protective order.

15 I guess I could imagine a confidentiality
16 agreement that has the exact same terms as a standard protective
17 order, that binds all authorized persons; anyone who sees the
18 information must sign the agreement, agreeing to be bound by
19 it. I think that's a closer call.

20 Our concern, though, is much more technical, and
21 that is, if you have these privileges, aren't you obligated to
22 do everything under the law to protect them in order so as to
23 avoid waiving those privileges? And we think because the law
24 says privileges apply, and protective orders are routinely
25 granted, that to protect against waiver, we need to push for the
26 protective order.

27 I don't rule out --

28 SENATOR BOWEN: I'm really going a different 5

1 direction, because I'm trying to determine what action we might
2 take.

3 If there's no way that Reliant can ever be
4 comfortable with anything other than a protective order, then I
5 think the issue is joined. We know what we're arguing about.

6 I think it's a horrible mistake for this
7 Legislature to involve the courts in this kind of a matter. I
8 cannot imagine any circumstance under which I would vote to do
9 that.

10 So, I'm trying to determine, you know, whether or
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11 not there's any room for Reliant to find another way to deal
12 with the issues, because that issue for me is, it's a matter of
13 setting a precedent that I just think would be terrible. And I
14 don't want to be recorded in the annals of history as one of the
15 Legislators who voted to involve the courts in matters involving
16 legislative subpoenas.

17 CHAIRMAN DUNN: If I could just echo that from
18 Senator Bowen's comment, Mr. Stevens.

19 At least that's the Chair's impression, that we
20 are at a point now where Reliant is in a position that, without
21 a court order, there is no satisfactory resolution to them of
22 this particular issue. And thus my comments before, Reliant
23 will have to do what it believes is necessary, which I assume is
24 to follow the path that Enron took and seek redress in the
25 courts. And I would expect that we would assert that separation
26 of powers issues in response to that particular claim.

27 I certainly welcome the input, if there is a
28 different approach that does not resort to us reaching out to
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1 either the court system or a neutral mediator to resolve this,
2 as we've done with other market participants. Of course, let's
3 do that.

4 I've been very clear from the get-go that this
5 Chair's desire, and I think the whole Committee, is to get
6 access to the documents. It's not to proceed with contempt.
7 Although we've been accused of doing it only for political gain,
8 we really want access to the documents.

9 So really the proverbial ball, I think,
10 Mr. Stevens, sits in your client's court as to whether there's a
11 resolution that does not involve the courts.

12 Comments? Senator Peace.

13 SENATOR PEACE: Let me give you the nonlawyer's

14 take on it.

15 CHAIRMAN DUNN: We're probably in need of one at
16 this point.

17 MR. STEVENS: I already got my wife's. My wife
18 said I was going to be a pinata today.

19 SENATOR BOWEN: She was wrong.

20 SENATOR PEACE: You're going to be in
21 communication with the executives at Reliant, who frankly come
22 out of a different culture, both from a Texas versus California
23 context, as well as in a business context. And they're going to
24 have a very tough time reconciling their view of the Texas
25 Legislature, which is part-time, meets, I think, three months of
26 the year every two years, and the breadth and the significance
27 of the constitutional challenge, so to speak.

28 This is the fifth largest nation in the world.

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1 We just got past France. They're not conceding the reality that
2 we produce better wine, but they've finally conceded that fact
3 that our economy has grown, despite the devastation -- and we're
4 not going to concede our democracy very quietly.

5 At the end of this hearing, the Chairman and I
6 are going to have a brief press availability that we had
7 attempted to schedule later this afternoon, but because of
8 budget stuff and other things, we're going to be discussing our
9 grievance against FERC. And there's much misunderstanding about
10 what's going on back at FERC, and no doubt will be our
11 subsequent lawsuits there, which is really in a grievance with
12 FERC. It's not with Reliant; it's not with Enron. It's with
13 FERC.

14 And similarly, I suspect whatever FERC
15 determines, that Reliant and others will sue and not like where
16 they go, because they've clearly signalled, they're going to do

17 something. You won't like what they do; we won't like what they
18 do.

19 Having worked with Reliant representatives as
20 well as other participants in the marketplace, going all the way
21 back to '95, the main thing is that there are firmly held
22 different philosophical views.

23 I suspect there's going to be a very broad
24 national debate over -- a debate I tried to engage back in '95,
25 but nobody wanted to listen to, whether the fundamental
26 administrative decision -- and I underline administrative
27 decision -- that FERC made to separate generation from
28 transmission and to define market power, which is why I'm

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1 anxious to hear what Reliant's definition of market power is, in
2 a very narrow context: As long as you're not controlling both
3 generation and transmission, you're not exercising market power.
4 That's at the root of why we're here, that decision by FERC. It
5 was an jurisdictional decision.

6 Frankly, we don't think FERC even had the legal
7 authority to make that decision. Congress never gave them the
8 right to do that. And we believe we have very solid legal
9 grounds in the Supreme Court decision in a Texaco case on the
10 natural gas side, which the court on the natural gas side ruled
11 precisely as we are going to ask, if we're ultimately pushed to
12 that extreme, that the determination be made.

13 That's going to be long and arduous legal battle
14 with many litigants from many directions. And it's going to
15 engage this nation in a fight that goes to the core of your
16 business model. And absent, putting it in shorthand, getting
17 our \$8.9 billion back, we're going to do that; we're going to
18 engage in that fight.

19 There is a way for all the parties to not have to

20 move down the Enron path. And I understand why Enron goes where
21 Enron goes, because this is Enron's view. This is Ken Lay's
22 personal view of the world. It's very deeply held. It's more
23 philosophical than it is financial. He believes it's the
24 righteous thing to do, and he's fighting on every front, and
25 with a great deal of righteous indignation.

26 Indeed, it's not even a national policy. It's
27 Ken Lay's view of the world. It's an international view of the
28 world. He was in Spain fighting for it last week. His company
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1 folks are in Japan. He's got a power plant in India that has
2 been shut down because of charging more money than the state
3 agency is willing to provide, and he's fighting for the same
4 principles.

5 All right, let's give him credit for fighting for
6 principle.

7 But I will tell you from a businessman's
8 perspective, for the rest of this business world to follow Ken
9 Lay's dream is going to wreak havoc, both on the country and on
10 your bottom line, because you're going to condemn yourself to a
11 series of resolution of these issues in litigative venues that
12 are going to be expensive, unpredictable, and disruptive.

13 The smart board room is going to be the board
14 room that gets control of this away from their lawyers as
15 opposed to handing it to their lawyers.

16 CHAIRMAN DUNN: No personal offense at that.

17 SENATOR PEACE: No personal offense.

18 And again, I want to underscore the respect I
19 have for the way in which Reliant has pursued its interests. We
20 have differences of opinion, but they've been pursued
21 respectfully.

22 The best legal advice you can give your client is

23 find a nonlegal way to resolve the differences that are left,
24 and distinguish yourself from your other competitors, who are
25 not really in this merely from the context of business and
26 competition. They're in it from a zealous pursuit of a deeply
27 held philosophy.

28 There have been more businesses ground into the
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1 ground in this country by virtue of skipping past good business
2 sense and embracing philosophy than by any other tactic.

3 It's worth what you paid for it in terms of
4 advice, but I recommend it heartily.

5 MR. STEVENS: Thank you, Senator.

6 CHAIRMAN DUNN: Last remaining question,
7 Mr. Drivon. Any further information as far as what's occurred
8 since June 28th regarding Reliant?

9 MR. DRIVON: No.

10 Mr. Chairman, I'm prepared to make my
11 recommendation.

12 CHAIRMAN DUNN: Please do.

13 MR. DRIVON: It is my recommendation that Reliant
14 be held in contempt of this process at this time, and that a
15 resolution be put forward to this Committee for a vote with
16 respect to reporting that contempt to the Senate.

17 CHAIRMAN DUNN: I want to make sure we're clear,
18 Mr. Drivon, on your recommendation, given what's occurred since
19 June 28th.

20 Mr. Stevens, I know you want to make some
21 comments on this issue. I'll turn to you in a minute.

22 It's the Chair's perception that the question
23 that Senator Bowen posed, the answer at least right now is that
24 we're not aware of any way to resolve this from Reliant's
25 perspective without court involvement via a protective order

26 actually issued by a court, even though the suggestion Reliant
27 is on a stipulated basis. And that without such a step at this
28 time, Reliant is not willing to produce documents that may be
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1 responsive to the subpoena that may fall within what Reliant
2 considers to be objections that they have, evidentiary or
3 privilege wise.

4 Is my perception wrong, Mr. Stevens?

5 MR. STEVENS: Not completely accurate, Senator,
6 because we are willing to make available 10,000 pages of
7 confidential documents right now. We've opened a repository in
8 my office. They're available to be reviewed.

9 And that offer is pursuant to an interim
10 confidentiality agreement, the agreement that's been tendered by
11 Mr. Drivon.

12 I'm not just trying to buy time. I'm thinking if
13 we can continue to talk about this, if I can explore with the
14 client Senator Bowen's suggesting of looking for a different
15 version of an agreement, that's a good thing.

16 I guess my bottom line is, I just don't feel like
17 we've acted with contempt.

18 CHAIRMAN DUNN: I think Senator Peace's comment
19 in that regard is correct, and why I made my comments about our
20 options as a body are limited. And it would be nice if we could
21 have contempt with respect, as Senator Peace said; contempt with
22 contempt. It would be nice, because I understand the concerns,
23 and you've raised them before with us, Mr. Stevens, that in
24 fact, yes, we're still trying to work out a solution.

25 SENATOR PEACE: Mr. Chairman, did I hear Counsel
26 suggest that he was willing to pursue some undetermined third
27 way, so to speak, that does not involve turning to the court?

28 MR. STEVENS: Let me say two things, Senator.

1 One, I'd like to think I'm a creative and
2 flexible lawyer, and I am always going back to the client to
3 revisit what works, what doesn't work, and I will do that.

4 But secondly, I don't want to buy time today on
5 contempt by leading the Committee to believe that we'll come
6 back with a different view, because it is a firmly held view.

7 So, whatever the Committee does today, I will
8 continue to work on this problem to try to find a solution. I
9 don't want to buy time by promising something I can't deliver.

10 SENATOR PEACE: Mr. Chairman, I do want to make
11 sure we do not lose the distinction between one entity who has
12 gone to court and another who hasn't. Reliant hasn't crossed
13 the threshold. They've reserved their options. They've brought
14 them to us, indicated their intention to go forward.

15 I'm not going to argue that we need to slow our
16 process down to do that.

17 However, I would wonder if our legal counsel can
18 be as creative as Reliant's counsel has claimed that they are in
19 terms of finding a way that encourages this effort to reconcile
20 two very strongly held views.

21 I don't think the views -- you couldn't possibly
22 -- your principals couldn't more devotedly hold their views with
23 respect to the need for this protection of confidentiality than
24 the Members of this Committee in this house hold with respect to
25 their responsibility to the citizens we represent to protect the
26 integrity of this branch of government.

27 CHAIRMAN DUNN: If I can make some comments,
28 Senator Peace, you raise some good points.

1 What I want to underscore is that at no time in
2 this process will we ever take the position we're not willing to

3 continue to keep the lines of communication open and explore
4 alternatives, although at times we have to draw lines, because
5 we all know that discussions can go on forever, and I use Enron
6 as an example.

7 We started the process of contempt. We continued
8 discussions with them virtually everyday. They've sued us. We
9 still continue those processes, and we will continue to do it,
10 even though that process is still moving forward.

11 SENATOR PEACE: I understand that, Mr. Chairman.

12 CHAIRMAN DUNN: Let me finish, Senator Peace.

13 Herein lies my problem at this juncture right
14 now. Due primarily to the burdensome objection that all the
15 market participants asserted, we established 16 priority
16 requests.

17 What I don't know, Mr. Stevens, is -- because we
18 want to make sure we treat everybody the same. Some folks may
19 think that's bad treatment or good treatment, but we want to
20 make sure that everyone is treated the same.

21 You know what our three demands have been with
22 respect to avoiding the commencement of the contempt process.

23 What your client is willing to produce under an
24 interim agreement, while Reliant decides whether it wants to
25 seek court intervention, or some other version of an agreement,
26 does it include the willingness to produce the documents that
27 are responsive to the 16 requests that the other market
28 participants have agreed to?

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1 MR. STEVENS: There may be some overlap, Senator,
2 but the 10,000 pages do not include most of those documents.

3 CHAIRMAN DUNN: I didn't think so, and therein
4 lies our problem in that, again, my perception is that Reliant
5 does not -- snapshot right now -- is not willing to produce all

6 of the documents responsive to the 16 until it resolves, one way
7 or the other, its concerns regarding its objections, privileges,
8 confidentiality.

9 So that we're in a position here now, I think, of
10 a Reliant -- and we don't disagree. You're trying to work with
11 us. It's not contempt with contempt -- we're in a position now
12 that Reliant is in a different position than the other market
13 participants that we have chosen not to go forward with any sort
14 of contempt process because they've agreed to those three items.

15 Again, for those who've just walked in, that's a
16 confidentiality order, a document depository, and producing the
17 response to the 16 requests.

18 I don't feel, in the position of Chair, that at
19 this point in time we can avoid going forward with the contempt
20 process with a specific market participant that will not agree
21 to what the other market participants have agreed to concerning
22 the production.

23 Senator Peace, did you want to add anything?

24 SENATOR PEACE: Mr. Chairman, I agree with that
25 one hundred percent.

26 However, I would ask Counsel to investigate what
27 actions could be taken, perhaps not with respect to Reliant, but
28 with respect to Enron, to distinguish between -- we essentially
6

1 have three kinds of parties. We have those that have not --
2 whose behavior has not risen to the technical level of the
3 contempt. We have Reliant in the middle, which is technically
4 in contempt because they refuse to meet the standard. And we
5 have a third party who's actually gone to court.

6 It seems to me that the actual action of going to
7 court, whether it's another count -- we ought not just simply be
8 indifferent to the notion.

9 You have indicated, Mr. Chairman, we're
10 continuing to work with Enron despite the fact they've gone to
11 court. On one level I say that's good. On the other level, I'm
12 concerned about it because it indicates that there's no penalty,
13 no consequence for having taken what I consider to be an
14 extraordinary and literally unprecedented step.

15 CHAIRMAN DUNN: If I can add one thing.

16 From the Chair's perspective, I'm going to sound
17 like I'm splitting hairs here, but I want to be very careful
18 about this. At least from Chair's perspective, I don't believe
19 it's appropriate for the Committee to pursue contempt with one
20 factor being that a market participant has filed litigation
21 against us.

22 One of the reasons we continue the process as to
23 Enron is that, not due to the fact they filed litigation, but
24 their pursuit of that litigation results in their refusal to
25 produce documents until that litigation is resolved. We're
26 working with them, and that may ultimately be resolved. But
27 that's really the relevance of the litigation, as opposed to
28 punishing them for mere filing of that litigation.

6

1 SENATOR PEACE: Obviously, I'll defer to the
2 Chairman in terms of his legal judgment.

3 But for your and my wife, Mr. Stevens, in the
4 world of perception, I would hope at least people would
5 recognize the difference on a going forward basis.

6 CHAIRMAN DUNN: Senator Bowen.

7 SENATOR BOWEN: Senator Dunn, I think from my
8 perspective the issue here has to do less with a comparison
9 between Enron and Reliant, and more with a comparison between
10 those market participants who have reached an agreement with
11 this Committee as to the conditions on which documents would be

12 produced.

13 I don't have much comfort that any such
14 accommodation can be reached in this instance.

15 I'm also concerned about the potential for
16 significant delay in the production of documents that could
17 result were the Committee not to take action today. If we were
18 continuing to stay in session next week, it would be less
19 problematic to make a decision to wait, but in all likelihood --

20 CHAIRMAN DUNN: It could happen.

21 SENATOR BOWEN: It could happen, but we hope it
22 doesn't.

23 So, I think we need to consider that. I think
24 you've laid out that we have this agreement with participants.

25 And the other question I have really has to do
26 with the issue of the out-of-state documents, because it appears
27 to me that that continues to be an unresolved issue as well.

28 So, we've got the issue of whether or not

7

1 anything short of a court order or a mediator will work. Then
2 we have this issue of whether or not documents that are
3 physically located in Texas will be produced. And my reading of
4 these responses is that there's no intention to produce those
5 documents.

6 CHAIRMAN DUNN: Mr. Stevens, I need to turn to
7 you on the compliance issue. If you want, share whatever
8 comments you want, including a response to that question posed
9 by Senator Bowen.

10 Oh, we're long past the time for a break for the
11 court reporter. Can I just let the record reflect one thing?
12 It was now not just me who made -- I'm trying to clear my
13 tarnished reputation there on time estimates.

14 My apologies, everybody. We're going to have to

15 take five or ten minutes for the court reporter to change paper.
16 I think we're nearing the completion, and we'll wrap it up very
17 quickly upon return. Ten minutes.

18 [Thereupon a brief recess
19 was taken.]

20 CHAIRMAN DUNN: With the arrival now of Senator
21 Bowen we will begin.

22 I believe just prior to the break, we were about
23 to turn to you, Mr. Stevens, with any responses you wish to
24 share, including responding to Senator Bowen's question, if my
25 recollection is correct.

26 MR. STEVENS: Correct me if I'm wrong, but I
27 believe the question was, with respect to documents located out
28 of state?

7

1 SENATOR BOWEN: Yes.

2 MR. STEVENS: I've looked at that issue very
3 carefully. I personally don't believe where the documents are
4 located, or in which state they are located, is dispositive.

5 What is important, I think, is whether a witness
6 within the State of California, or an entity within the State of
7 California, is served with a subpoena, and then the question
8 becomes, does that person or entity have custody or control over
9 the documents?

10 If the answer is yes, it doesn't matter if
11 they're in Reno or in Truckee. If the answer is no, then they
12 wouldn't be within the scope of the subpoena power.

13 I don't believe that -- let me make an even
14 clearer statement.

15 We are not taking the position that our
16 documents, which are otherwise properly subpoenaed within the
17 scope of this investigation, will not be produced simply because

18 they're in Texas. If we've got to produce documents, and
19 they're in Texas and they're responsive, and other things have
20 been resolved, they're going to be put on a plane in a box and
21 brought here.

22 CHAIRMAN DUNN: Let me ask the question, though,
23 Mr. Stevens, to make sure that at least I'm on track with what
24 you're saying.

25 The concern of Reliant is that if you, the
26 Legislature, have subpoena power over Custodian of Record X, and
27 Custodian of Record X has control of documents that are
28 responsive, even though those documents are out of California,
7

1 they'll be produced.

2 But if the Custodian of Records for Reliant --
3 I'll just make this up -- over bidding data is an individual
4 that is in Texas, someone we probably all will agree that that,
5 as a person, is outside of the jurisdiction of the subpoena out
6 of this Legislature, that if that's the scenario, that Reliant
7 will not produce such documents.

8 Am I correct in that perception or incorrect?

9 MR. STEVENS: I think incorrect. I know you
10 don't want another law review.

11 CHAIRMAN DUNN: That's okay. You've got a bunch
12 of lawyers sitting up here.

13 MR. STEVENS: The Chair actually complicated my
14 analysis somewhat in the last hearing by taking the position
15 that the Code of Civil Procedure didn't apply because, quite
16 frankly, I was assuming it did apply, and that the Code of Civil
17 Procedure sections authorized the Committee to serve an agent
18 for service of process within the state, and then that triggered
19 the obligation to produce responsive documents, even if they're
20 out of state.

21 So, I was giving you the benefit of that CCP
22 provision, and then you gave it back by telling me that the CCP
23 didn't apply.

24 CHAIRMAN DUNN: Understood.

25 MR. STEVENS: So, I think the answer to this
26 legal question turns on whether or not the CCP applies. If it
27 does, I think the documents are responsive, and it doesn't
28 matter if they're in Texas.

7

1 CHAIRMAN DUNN: Senator Bowen.

2 SENATOR BOWEN: Can I get out of the law review
3 and ask a really simple question?

4 Does your client intend to produce documents that
5 are responsive and are located out of state?

6 MR. STEVENS: Yes.

7 CHAIRMAN DUNN: All right.

8 Mr. Stevens, other comments you wish to make --

9 SENATOR BOWEN: See how much faster that is?

10 CHAIRMAN DUNN: -- with respect to the compliance
11 issue?

12 MR. STEVENS: Does address include contempt?

13 CHAIRMAN DUNN: Yes. When I say "compliance",
14 the question is, is Reliant in compliance? And the follow-up
15 question, if the Committee's position is no, should it move
16 forward with the contempt process?

17 We heard Mr. Drivon comment on what's occurred,
18 and what's been produced, what's not produced.

19 I'm just curious if you have any comments you
20 want to share on that.

21 MR. STEVENS: Well, I don't want to repeat the
22 points I've made, but in conclusion, I can't state strongly
23 enough how firmly we believe that we have not acted in contempt.

24 And I appreciate that the Chair does not believe
25 that there are other mechanisms available right now procedurally
26 speaking to avoid addressing or voting on contempt today. I
27 appreciate that; I accept that.

28 It's just hard for me to accept that we'll be
7

1 deemed as a contemptor, if that's the right word, given our good
2 faith dispute over a complicated legal question, one which has
3 not been addressed by the courts.

4 I know this Committee and this Chair are not
5 being in the least bit vindictive.

6 It does put us in a difficult position, though,
7 of either being held in contempt, or surrendering a firmly held
8 legal belief. Either waive your objection and sign the
9 agreement, or be held in contempt.

10 At this point, we opt to stand on principle. And
11 again, we'll continue to look at a way to resolve in impasse.

12 You know, our preference is not to have
13 litigation. If we had preferred that, we would have done that.
14 And we were hoping to come here, hat in hand, forthrightly, tell
15 the Chair and the Committee what our position is, what our
16 dilemma is on waiver, and then find a way to resolve this,
17 whether it's mediation, a stipulated protective order, or some
18 other creature or vehicle, we're open to discussing that.

19 And it just doesn't strike me that that position
20 equals contempt. And I know you know that's our position. I
21 don't want to belabor it.

22 But I would ask the Committee Members to keep
23 that in mind.

24 I would also note that it doesn't appear that the
25 full Senate really can do anything with the report right now.
26 So, one possibility would be delay this, hold it in obedience.

27 Let's see what happens over the next four weeks. Give us a
28 chance to work on this.

7

1 I note that the other parties who aren't here,
2 who aren't being held in contempt, haven't complied. They've
3 said they'd comply. They haven't moved all of those responsive
4 documents.

5 CHAIRMAN DUNN: Your comment is correct, and let
6 me clarify if just for those that are listening, Mr. Stevens,
7 and then let you continue.

8 That is true, that the ones that we are extending
9 the compliance review for 30 days, what technically they have
10 done is -- and correct me if I misstate any of this, Mr. Drivon
11 -- they have agreed to the three requests of the Committee,
12 those being: Sign the confidentiality agreement; establish a
13 document depository; and then put into it the documents
14 responsive to the 16 priority requests.

15 I believe most of them have done the first two.
16 They are in process with respect to the third.

17 We're going to get back to Mr. Stevens, because I
18 did interrupt you.

19 Mr. Drivon, am I incorrect on any of that?

20 MR. DRIVON: I have attempted to determine that
21 each of those market participants has complied with the first
22 two, and has made a substantial contribution to number three.
23 And we have varying numbers of documents that have been
24 produced.

25 I have been to the Mirant depository and looked
26 at what they've produced, and I have talked with the others.
27 And, you know, the numbers of documents vary, but I think go up
28 to about 125 Bekins' boxes that Duke has produced.

7

1 I estimate that a generator, as opposed to AES or
2 NRG, for instance, would probably need to produce between
3 150,000 and 200,000 pages of documentation to fully satisfy the
4 16 requests. Of that, we have physically received 1,792 pages
5 from Reliant, and we have an assurance that they will produce
6 another 10,000 pages, most of which they concede do not respond
7 to these, so there has been -- to the 16 requests.

8 So, there has been what I have deemed to be a
9 substantial move toward full compliance, recognizing the
10 difficulties of producing that many documents.

11 CHAIRMAN DUNN: Which brings us back,
12 Mr. Stevens, and again, I don't think any of us want to repeat
13 the old ground here.

14 Senator Bowen, if you had additional questions,
15 we'll certainly come back to you in just a second.

16 The problem from the Chair's perspective at least
17 is, that as I hear Reliant's position, due to the fact that the
18 Committee is, or at least the Chair is recommending to the
19 Committee that we not agree to a stipulated protective order,
20 and thus seek judicial involvement in this process, that as a
21 result, Reliant will not produce those documents that may be
22 responsive to the 16 priority requests that Reliant deems fall
23 under some confidentiality claim, be it trade secrets, whatever
24 the case may be.

25 And what you're asking for is -- I think the
26 position I just stated is correct, but you are not precluding
27 that there still might be some alternative route, out of the
28 fact that we can't resolve our differences that aren't meant bad

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1 faith by Reliant, nor bad faith by the Committee.

2 We have a legitimate dispute. That I
3 acknowledge.

4 The Chair believes it has ruled to the
5 objections, et cetera, that Reliant has raised. And thus, we
6 have done the appropriate resolution as provided for.

7 Now it's up to Reliant to take that next step.
8 Will it follow the Enron route or some other route? I don't
9 know. That's obviously your business, Mr. Stevens, in
10 consultation with your client.

11 Senator Bowen, did you have some follow-up?

12 SENATOR BOWEN: No. I think it's worth recalling
13 that the contempt finding does require a vote of the whole
14 Senate ultimately. And what we did with Mirant was, you know,
15 preliminary proceedings, we were able to resolve the problem,
16 and the record was then expunged.

17 I would be in a very different position today
18 were I being asked to judge on whether the Senate as a whole
19 intended to make the finding of contempt and determine what
20 remedies, if any, were appropriate. That's not where we are.
21 And there is, as a result, a difference I think.

22 CHAIRMAN DUNN: Mr. Stevens.

23 MR. STEVENS: I fully appreciate that, Senator,
24 but it is still important to us, to the client, to me as
25 counsel, not to have even the Committee or a single Member on it
26 view us as acting in contempt.

27 Maybe it's psychological. Maybe it's of no legal
28 significance. But that's the reason I'm here.

7

1 We sent our letter. You know our position. So,
2 I could have pulled a no-show, and some suggested it would be a
3 good idea, but I didn't. We wanted to be here.

4 CHAIRMAN DUNN: We've seen that before, not on
5 behalf of your client.

6 MR. STEVENS: We wanted to be here, because we

7 don't want a single Member of this Committee to view us that
8 way, and to express that view by voting in favor of reporting us
9 to the Senate as contenders.

10 SENATOR BOWEN: I think the difficulty is that if
11 we are going to be stuck on the question of whether a stipulated
12 protective order is necessary, there's no way out of getting
13 there, because --

14 CHAIRMAN DUNN: Therein lies the problem.

15 SENATOR BOWEN: That's the problem, really. That
16 is a road that is just a dead end, absolutely. I'm sure it's a
17 dead end on this Committee.

18 And I cannot imagine this matter going to the
19 Senate as a whole and having the Senate say, well, fine, we'll
20 just go to the courts to resolve this. Not even in the term
21 limit Senate.

22 CHAIRMAN DUNN: Right, which is why, at least
23 from the Chair's perspective, Mr. Stevens, if there was -- we've
24 we got some smart lawyers involved, not only on the Committee
25 but on staff, representing Reliant, representing the other
26 market participants. If there was an alternative to the
27 approach we've taken thus far, I think at least some evidence of
28 it would have surfaced already, other than what I know your

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1 client considers to be a reasonable suggestion, which is a
2 neutral mediator or a stipulated protective order, a direction
3 that this Committee, at least on recommendation of the Chair, is
4 not willing to go.

5 So, I'm not so sure I see some hope to resolve
6 that fundamental but good faith dispute between Reliant and the
7 Committee, thus continuing this process, to be decided upon at a
8 different time.

9 I think Senator Bowen is absolutely correct in

10 the sense that, if the Committee so chooses, it can move forward
11 with the process. I know the client doesn't want that; I get
12 that. And it may be simply a psychological issue, but an
13 important one. I don't demean that position in the least.

14 But otherwise, we will not be able to move this
15 forward until we return from an alleged recess, if we actually
16 have it, and thus delay the process even further.

17 But as with all of the market participants, at
18 any time that we reach an agreement on those three issues, the
19 process would be terminated immediately. At least that's the
20 position of the Chair.

21 Mr. Stevens, any more comments you wish to
22 make?

23 MR. STEVENS: No. I appreciate the Chair's time
24 and consideration.

25 CHAIRMAN DUNN: And we appreciate your
26 involvement in this entire process. I know that there are
27 several representatives from the client that are here today.

28 And underscore what Senator Peace has said, and
8

1 Senator Bowen has said, and others, that we don't view where we
2 are now with respect to your client as an act of bad faith at
3 all.

4 We have found an area of dispute, legitimately
5 so, that we simply cannot resolve. We believe we only have one
6 course of action to take, and obviously you, in consultation
7 with your client, have to decide which course of action it
8 wishes to pursue at that point in time as well.

9 Any other comments? Senator Chesbro, no.

10 I'm going to pause for a few moments here, like
11 we had to do last time.

12 Ken, if you could place a call, we need to gather

13 up first Senator Brulte's office to alert them. Senator
14 Brulte's office, if they could release Senator Morrow and
15 Senator Johannessen for a few moments to come to the Committee
16 for purposes of a motion and vote, it would be appreciated.

17 I want to reiterate one thing I had said at
18 outset.

19 I've had few questions now about what is the
20 procedure that's going to follow any action, whether today or on
21 any noncompliance issue.

22 It's our understanding that, and let's just zero
23 in on the Enron process. We will finalize written report of
24 contempt for forwarding to the full Floor. We expect that it
25 will be presented to the full Senate before the week is out,
26 presumably tomorrow. I don't know if we have session scheduled
27 for Friday.

28 There won't be any discussion on that report. The
8

1 President Pro Tem is expected to refer that report to the Rules
2 Committee for further recommendations, at which time the Rules
3 Committee may have its own hearing; it may create its own
4 subcommittee or other committee to review the report and make
5 recommendations. That rests within the discretion of the Rules
6 Committee.

7 But it won't be tomorrow that there will be a
8 full discussion in the full Senate. We will simply present the
9 report tomorrow, and then the President Pro Tem is expected to
10 refer the report to Rules Committee.

11 And that's the process we expect to unfold with
12 respect to any similar type findings of this Committee in its
13 relationship to the full Senate.

14 And now we're just waiting for Senator
15 Johannessen.

16 We now have Senator Johannessen. We have been
17 anxiously awaiting your arrival, Senator.

18 Having heard the input of all, and a much longer
19 than anticipated discussion than as estimated earlier, the Chair
20 will make the following motion.

21 Irma, listen closely. There's several parts to
22 it.

23 The Chair makes the following motion:

24 That we continue the review of compliance hearing
25 as to Duke, Dynegy, Williams, NRG, and AES to the same date
26 that will be established for the continued review of the Mirant
27 compliance, which will be either late August or early September.
28 The date is not picked as of yet, but that we continue the

8

1 compliance review, again, as to Duke, Dynegy, Williams, NRG, and
2 AES.

3 Second, that we adopt the Chair's recommendations
4 as to the objections asserted by Reliant, both evidentiary and
5 privilege.

6 And three, that we find Reliant currently out of
7 compliance, but respectfully, and therefore in contempt, and
8 that we commence the contempt process. And staff is directed to
9 prepare the written report as required for ultimate forwarding
10 to the full Senate.

11 As with the other market participants, if at any
12 time during this process Reliant comes into compliance by
13 establishing a document depository, which I believe has already
14 been established, signing the confidentiality agreement, and
15 producing the 16 priority requests, that this process of
16 contempt be terminated at any time at the Chair's discretion
17 should such compliance be found.

18 That's the motion.

19 Any final comments by anyone?
20 MR. DRIVON: I'm unclear, Senator, as to whether
21 your motion calls merely for preparation of the report, or the
22 preparation and presentation of the report.

23 CHAIRMAN DUNN: I'm sorry, preparation and
24 presentation upon completion of the report.

25 Any other comments, questions, concerns?

26 Motion having been made, Members present,
27 Secretary, please call the roll.

28 SECRETARY MORALES: Chairman Dunn.

8

1 CHAIRMAN DUNN: Aye.

2 SECRETARY MORALES: Chairman Dunn Aye. Senator
3 Bowen.

4 SENATOR BOWEN: Aye.

5 SECRETARY MORALES: Senator Bowen Aye. Senator
6 Chesbro.

7 SENATOR CHESBRO: Aye.

8 SECRETARY MORALES: Senator Chesbro Aye. Senator
9 Escutia. Senator Johannessen.

10 SENATOR JOHANNESSEN: Aye.

11 SECRETARY MORALES: Senator Johannessen Aye.

12 Senator Kuehl. Senator Morrow.

13 SENATOR MORROW: Aye.

14 SECRETARY MORALES: Senator Morrow Aye. Senator
15 Sher.

16 SENATOR SHER: Aye.

17 SECRETARY MORALES: Senator Sher Aye.

18 The adoption of motion passes, six-zero.

19 CHAIRMAN DUNN: Thank you, Madam Secretary.

20 We have concluded our hearing today, and we are
21 adjourned.

22 MR. STEVENS: Thank you very much, Senator.
23 CHAIRMAN DUNN: Thank you, Mr. Stevens.
24 [Thereupon this portion of the
25 Senate Select Committee hearing
26 was terminated at approximately.
27 1: 50 P. M]
28 -- oo0oo--

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1 CERTIFICATE OF SHORTHAND REPORTER

2

3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Select Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 _____ day of _____, 2001.

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EVELYN J. MIZAK
Shorthand Reporter

9ENERGY. TXT

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APPEARANCES

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SENATOR JOSEPH DUNN, Chair

SENATOR DEBRA BOWEN

SENATOR WES CHESBRO

SENATOR MAURICE JOHANNESSEN

SENATOR WILLIAM MORROW

SENATOR BYRON SHER

MEMBERS ABSENT

SENATOR MARTHA ESCUTIA

SENATOR SHEILA KUEHL

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RONDA PASCHAL, Committee Consultant

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WADE TEASDALE, Chief of Staff to SENATOR MORROW

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